

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-129346-02

Date:

June 28 2002

X =

Y =

A =

B =

C =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

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This responds to the letter dated May 13, 2002, submitted on behalf of X, requesting a waiver of the 5-year waiting period imposed by section 1362(g) of the Internal Revenue Code for X to reelect subchapter S treatment under section 1362(a).

## FACTS

According to the information submitted, X was incorporated Date 1 under State law. Effective Date 2, X elected to be treated as a subchapter S corporation. On Date 3 the shareholder of X sold their stock in X to Y, an ineligible S corporation shareholder, thereby terminating X's S corporation election effective Date 3.

On Date 4, A, B, and C purchased 100% of the stock of X from Y. A, B, and C represent that the new shareholders of X are neither directly nor indirectly related to Y or the prior shareholder of X. Since the five year post termination period under section 1362(g) has not expired, X has submitted this ruling request seeking the Commissioner's consent, as provided in section 1.1362-5(a), to reelect to treat X as an S corporation effective Date 5.

## LAW AND ANALYSIS

Section 1362(a) provides, in relevant part, that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that if a small business corporation has made an election under section 1362(a), and if the election has terminated under section 1362(d), the corporation (and any successor corporation) is not eligible to make an election under section 1362(a) for any taxable year before its 5th taxable year that begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election for five taxable years as described in section 1362(g). The Commissioner, however, may permit the corporation to make a new election before the 5-year period expires. The corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the

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absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing the termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

## CONCLUSION

Based solely on the representations made and on the information submitted, we grant permission for X to reelect to be treated as a subchapter S corporation, effective Date 5. A copy of this letter should be attached to X's next federal income tax return.

The ruling in this letter is based on information and representations submitted by taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

**/s/ David R. Haglund**

David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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